



OFFICE OF THE SAINT LOUIS COUNTY ATTORNEY

MARK S. RUBIN COUNTY ATTORNEY

September 20, 2011

Gordon Ramsay, Chief
Duluth Police Department
104 City Hall
Duluth, MN 55802

Re: Review of Investigative Reports Involving the Officer Involved Shooting of:
Brian Cayce Butala, DOB: 9-10-79, August 28, 2011

Dear Chief Ramsay:

Our office has received a completed BCA investigation report regarding the above matter. Vern Swanum, a prosecutor with over 30 years of experience, and I have reviewed the material to determine whether or not Sergeant Brad Wick was justified in using deadly force which resulted in the death of Brian Butala.

Based upon the foregoing, it is our conclusion that Sergeant Brad Wick was authorized by law and justified under the circumstances in using deadly force.

On August 27, 2011, officers of the Duluth Police Department were in the process of attempting to locate and arrest Brian Butala on charges of domestic assault. The officers also were aware of outstanding warrants for Mr. Butala's arrest.

At approximately 7:10 p.m. on August 27, 2011, a man approached the pharmacy counter at Walgreen's pharmacy located at 13th Avenue East and Superior Street. Through a later photo display shown to the clerk, this man was positively identified as Brian Butala.

Butala presented the clerk with a note demanding her to give him all of the pharmacy's Opana 40mg, a controlled substance, warning not to set off the silent alarm and telling her that he had a gun. The clerk initially brought Butala a small amount of pills but Butala said that he knew that there was more in the store. He displayed the handgun to the clerk, showing her that he had it in a small bag or satchel that he was carrying. The clerk then retrieved more of the pills making a total of three trips to the safe where the pain medication was kept. She described Butala as

remaining calm and almost "flirty." At one point, she said she advised Butala that he would be on surveillance video and his response was "he had nothing to lose."

With the stolen drugs, Butala left the store just moments before the police had arrived. The clerk had managed to trip the silent alarm during one of her trips to retrieve the medication. Butala was described as a white male, balding, carrying a blue bag.

Officer Tait Erickson was one of the initial responding officers in a marked squad and took a position at First Street and 13th Avenue East in the parking lot of the Continental Ski Shop. He said he was almost immediately approached by a male stating his car had just been stolen by a man with a gun. He described his car as being a 2002 Infiniti, Minnesota License NJK-878.

This male explained that his car had been parked on First Street. When he walked to his car to retrieve some items, he saw a male climbing a fence who then approached him and demanded his car keys. The car owner refused to turn over the keys. The male who had jumped the fence was carrying a bag, put the bag down and took out a handgun, at which time the car owner relinquished his car keys. He said the man did not point the gun at him but his meaning was obvious. After the man took the car keys, he got into the Infiniti and was joined by a female. The car owner described the man as being a white male wearing glasses.

While Officer Erickson was interviewing the car owner, he had a booking photo of Brian Butala in his notebook, as he too had been attempting to locate and arrest Butala on outstanding warrants and an assault matter. When the car owner saw the photo of Butala in the notebook, he spontaneously stated that the photo looked like the man who had stolen his car.

A city-wide attempt was put out to locate and arrest Butala. All officers were warned to use extreme caution due to the fact that Butala was known to be armed with a handgun and because he had a lengthy and violent criminal history. Officers also had intelligence information that Butala had made statements indicating that he would not go back to prison and that he would take officers with him if they tried to arrest him.

During the early evening hours of August 28, 2011, officers of the Duluth Police Department received information that Butala was going to be at Hugo's Pizza in the area of 102nd Avenue West in Gary-New Duluth at approximately 10:00 p.m. Both marked and unmarked squads went to the vicinity taking up strategic positions hoping to locate and stop Butala before he arrived at Hugo's. When they did not observe him arriving, a plain-clothes officer walked through Hugo's and positively identified Butala as already being in the restaurant and he was in the company of others. Because of the number of people in the restaurant who would be put at risk if Butala resisted and used violence, officers determined that they would not attempt to arrest him in the restaurant.

Officers planned to maintain surveillance of Butala as he left the restaurant and then coordinated a plan to apprehend him. The restaurant is located adjacent to a very busy convenience store gas station. Again, officers determined that innocent citizens would be put in danger in the event Butala did use deadly force when resisting arrest and put together a plan to wait until he drove away and then stop the vehicle in an area that would subject few civilians to danger.

Just before 10:30 p.m., a woman who had been in the company of Butala, later identified as Amy Sternal, left the restaurant and walked a short distance and got into the stolen Infiniti. She drove the car back to the restaurant and parked in the lot of the convenience store. Shortly thereafter, Butala came out of the restaurant and got into the passenger seat of the car. Sternal then drove off.

Within a block, Duluth Police officers made a coordinated effort to block the path of the Infiniti and apprehend Butala. However, Sternal was able to drive around the road block and flee at high speeds for a few blocks before missing a corner and crashing into a house at 1402 102nd Avenue West. Both Butala and Sternal got out of the car and fled on foot.

Duluth Police officers, including Sergeant Brad Wick and his K9 partner, were already on the scene and actively engaged in the operation and gave immediate pursuit.

The female resident who lived at 1414-102nd Avenue West was asleep on her couch when she was awaked by a loud pounding and yelling at her back door. She reported that she was momentarily confused due to sleep and did not have her glasses on, but made her way to the back door that opened into her kitchen. She heard someone yelling, "Help me. It's an emergency." She approached the door, when suddenly the door opened and two people rushed in. The female resident recalled that she began to fall back or was pushed back, and almost immediately she was shot in the leg by, she believed, one of the intruders, causing her to stumble out of the kitchen on to the floor in the living room.

The female resident recounted that almost immediately after entry by the two intruders, police officers entered the house and began shouting commands. She heard a number of gun shots and more commands. She reported that she was extremely afraid for her life during the incident. The bullet wound she suffered was a through and through wound; and fortunately, not life threatening.

Sergeant Wick and Officer Steve Ring heard yelling to the effect of: "open the door, it's an emergency," at the back door of 1414-102nd Avenue West, approached and actually saw Butala and Sternal entering just as the rear door opened. They were perhaps 20 feet away at the time.

Both had their service firearms deployed. As the back door was opened, they heard screaming from within the house.

Sergeant Wick, a 25-year veteran of the police force, made a considered decision to enter the home at this time. He would later tell BCA investigators he was concerned for the safety of the homeowner. He knew of Butala's violent history, believed Butala was armed and was aware that Butala had vowed that he would not return to prison. Sergeant Wick believed that there was a high likelihood that a hostage situation could develop if he did not make immediate entry into the house.

With extraordinary concern for the physical safety of the homeowner and setting aside the personal risk to himself, he entered the same door entered by Butala and Sternal. As he did so, he could see the two just entering the living room area of the house and saw the female resident being pushed to the ground. As he entered the door, he heard screaming from the female resident.

Sergeant Wick entered, saw the suspects, and loudly announced himself as "POLICE" as he made his way through the kitchen and rounded the corner of the kitchen/living room archway. He saw a muzzle flash as Butala had turned towards him, gun in hand, and fired. Sergeant Wick instantaneously returned fire then momentarily stepped behind the archway for some measure of protection as Butala continued to discharge his firearm. Believing he had not hit Butala with his first shots, he stepped back into the line of fire and returned another volley of shots at Butala. He noticed that Butala continued to aim his firearm at him. Sergeant Wick believed he struck Butala with the second volley of shots as he heard him grunt and saw him begin to sink to his knees. However, Butala continued to aim his firearm at Sergeant Wick.

Once again Sergeant Wick stepped momentarily behind the archway to avoid direct line of fire from Butala. Still believing Butala posed a threat to himself and the female resident, Sergeant Wick again exposed himself to the line of fire from Butala, simultaneously shouting, "Drop your weapon." He came around the archway and saw Butala on his knees but still holding his firearm in the direction of Sergeant Wick. Once again Sergeant Wick fired, this time successfully eliminating the threat to himself and the female resident as Butala fell face down with mortal wounds.

Officer Ring would later recount how he followed Sergeant Wick into the house. Almost immediately as Sergeant Wick began to encounter Butala and Sternal, Butala shot at Sergeant Wick. Officer Ring, was directly behind and slightly to the side of Sergeant Wick, felt shrapnel type debris hit him in his upper torso and face area. Later, crime scene investigation by the BCA determined that a round fired by Butala had struck the archway wall immediately to the right and head-high area of Sergeant Wick, passing through the wall, spraying plaster debris around, and

causing the shrapnel-effect felt by Officer Ring. The shot passed between the two police officers.

Butala died on the scene from multiple gunshot wounds. The firearm he was discharging in the house was found with the slide locked back and the chamber and magazine empty, indicating he fired the gun until it was empty. On scene investigation found three empty shell casings in the living room that had come from Butala's gun, plus one live round outside the house. The importance of the live round outside is that it would likely indicate that Butala was charging the firearm in preparation of firing just prior to breaking into the residence.

Sternal was taken into custody, unharmed. The female resident was transported to the hospital for medical attention.

BCA investigation has determined that Sergeant Wick discharged his service firearm 12 times during the encounter. Butala was struck at least seven times.

When Butala's body was recovered, found in his pants pocket in a sock was another loaded handgun.

The issue before us is whether Sergeant Wick was justified in using deadly force under the circumstances.

Minnesota Statute Section 609.066 authorizes a police officer to use deadly force in the line of duty to:

1. Protect the officer or others from apparent death or great bodily harm;
2. To effect the arrest of a suspect that the officer knows or has reasonable grounds to believe has committed a felony involving the use or threatened use of deadly force; or
3. To effect the arrest or capture of a person who the officer knows or has reason to know has committed a felony, if the officer reasonably believes the person will cause death or great bodily harm if the apprehension of the person is delayed.

The facts outlined above are supported in all respects by credible evidence, established by a thorough and objective investigation by the Minnesota BCA. It would be hard to imagine a case in which use of deadly force would be more justified.

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Butala was a multi-time convicted felon with outstanding warrants for his arrest. There was extremely strong evidence that he had committed two armed robberies, one at Walgreen's and the other involving the automobile. During one of the robberies he had indicated to the victim that he "had nothing to lose." The officers had credible intelligence information that Butala had indicated an intent to use deadly force against law enforcement if they attempted to arrest him. He fled as a passenger in a motor vehicle in a high speed chase when apprehension was attempted and was observed forcing himself into a home of an innocent civilian. Officers had every reason to believe he was armed with at least one handgun, and failure to act could easily have put the innocent homeowner in grave danger. Duluth Police officers had repeatedly taken extreme care in trying to avoid a situation where innocent civilians would be hurt during the apprehension of Butala.

Sergeant Wick was justified in using deadly force in protecting himself and others from apparent death or great bodily harm and while attempting to arrest a suspect known to have committed a felony while threatening the use of deadly force.

In conclusion, the actions of Sergeant Brad Wick were not only authorized by law under the statute, but were more than justified under the circumstances. He demonstrated professionalism, overriding concern for the safety and well-being of another, admirable judgment under a dangerous and high-stress situation, courage and valor of the highest order and tradition of law enforcement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark S. Rubin". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

MARK S. RUBIN

St. Louis County Attorney

MSR:ymk